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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,737	10/07/2003	Kim Sutton-Rainey	RAIN-1-1005	5294

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EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/680,737	SUTTON-RAINEY ET AL.	
	Examiner	Art Unit	
	Bryon P. Gehman	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

1. This application contains claims directed to the following patentably distinct species of the claimed invention: I) Figures 1-6 and 15-17; II) Figure 7; III) Figure 8; IV) Figures (A-10; V) Figures 11-12; VI) Figure 13; and VII) Figure 14.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no allowable claim is held generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mark Byrne on February 1, 2005, a provisional election was made without traverse to prosecute the invention of species I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. No claims at this time have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 5, "the first set of crease lines" is inconsistent with previous terminology or lacks antecedent basis. In line 8, "the second set of crease lines" and "the first plurality of tabs" and line 9, "the first plurality of slots" each are inconsistent with previous terminology or lack antecedent basis. See also claim 10 for the same indefiniteness.

In claim 3, the claim is directed to only "The apertures of Claim 2", when the claim is not limited to apertures alone. Also the scope of the term "aperture" is indefinite, as "each aperture of the plurality of apertures is a set of apertures" is unclear how a single "aperture" can comprise "a set of apertures". See also claim 12.

In claim 4, line 1, "Use" is capitalized improperly.

In claim 5, the claim is directed to only "The flexible material of Claim 4", when the claim is not limited to the flexible material alone.

In claims 7 and 8, line 2 of each, "has" is ungrammatical.

In claim 18, line 15, "the central chamber" lacks antecedent basis.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 6-12, 14-15, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Maroszek (5,052,552). Disclosed is a multi-use carrier comprising a single die-cut sheet (12) made of a flexible material having a first plurality of crease lines (82-88), a second plurality of crease lines (58-64 and 106-108), a handle cutout (136 and 138), a plurality of slots (46, 48), a plurality of tabs (112, 114) and a plurality of vessel apertures (116-122), whereby a first pivoting action (Figure 5) substantially erects the single die-cut sheet to an expanded carrier having the handle cutout define a handle (40) and the plurality of vessel apertures disposed along the perimeter of the carrier and a second pivoting action (From Figure 2 to Figure 1) engages the plurality of tabs (112, 114) with the plurality of slots (46, 48) to form a central chamber spanned by the handle and surrounded by the plurality of vessel apertures.

As to claims 2-3 and 11-12, disclosed are substantially circular apertures.

As to claims 6-9, 14-15 and 20, the described surfaces of Maroszek are inherently capable of receiving messages and images if so provided.

As to claim 18, Figure 5 indicates a three layer folding.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 6-12, 14-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maroszek. To any degree the claimed carrier and sheet may be argued to not be exactly met by the carrier and sheet of Maroszek as described, those differences are held to be inherent or fall within the realm of common knowledge in the art.

As to claims 2-3 and 11-12, the various aperture shapes recited are disclosed as obvious variants of one another and such is also maintained by the examiner.

As to claims 6-9, 14-15 and 20, the described surfaces of Maroszek are inherently capable of receiving messages and images if so provided.

As to claims 16 and 17, the particular dimensioning of the sheet and carrier is not seen to provide any new and unexpected result.

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9. Claims 4-9, 13-15 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maroszek in view of Picciolo (5,797,486). As to claims 4-5, 13 and 19, Picciolo discloses a carrier and sheet made from paper material, such as cardboard. To modify the carrier and sheet of Maroszek employing paper material such as cardboard would have been an obvious substitution of materials already well known in the field, as demonstrated by Picciolo. The various particular materials recited are disclosed as obvious variants of one another and such is also maintained by the examiner.

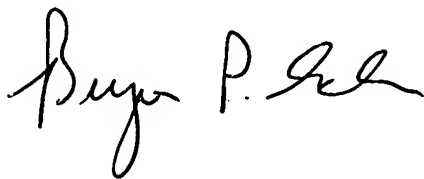
As to claims 6-9, 14-15 and 20, Picciolo discloses providing the handle with various indicia (printed messages and indicia) to provide information. The various recited indicia locations are disclosed as obvious variants of one another and such is also maintained by the examiner.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are carriers similar to applicants'.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG